

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: : Case No. 98-2870 (DDS)  
: :  
SUMMIT METALS, INC., : Chapter 11  
: Related Docket No. 517  
Debtor. : :

**NL FRANK AKERS, L.P.'S STATEMENT OF ISSUES AND DESIGNATION OF  
ITEMS TO BE INCLUDED IN THE RECORD FOR APPEAL**

Now comes, NL Frank Akers, L.P., a Texas limited partnership, (hereinafter, "NLFA"), and, pursuant to FED. R. BANKR. P. 8006 submits the following statement of issues and designation of items to be included in the record for appeal:

**I.  
Background**

1. On August 19, 2005, NLFA filed a Notice of Appeal (Dkt. 517) with respect to the following orders or rulings of this Court (the "Appealed Orders"):

(a) Order Denying Motion Of NL Frank Akers, L.P. To Reconsider Order Granting Chapter 11 Trustee's Application Pursuant To FED. R. BANKR. P. 9019 In Support Of Settlement Agreement With The Internal Revenue Service [Dkt. 487]; and

(b) Order Denying Motion Of NL Frank Akers, L.P. To Reconsider, Modify, And Make Additional Findings With Respect To: Order Denying Motion Of NL Frank Akers, L.P. To Reconsider Order Granting Chapter 11 Trustee's Application Pursuant To FED. R. BANKR. P. 9019 In Support Of Settlement Agreement With The Internal Revenue Service. ")[Dkt. 511].

2. Federal Rule of Bankruptcy Procedure 8006 provides in pertinent part:

Within 10 days after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and serve on the appellee a designation of the

items to be included in the record on appeal and a statement of the issues to be presented.

**II.**  
**Statement of Issues and Designation of Record on Appeal**

**A. Statement of Issues**

3. With respect to the Appealed Orders, NLFA makes the following Statement of Issues pursuant to FED. R. BANKR. P. 8006:

- Whether NLFA had standing to challenge the Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service ("Settlement Motion") or the Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service ("Settlement Order").
- Whether the bankruptcy court erred in not allowing NLFA to intervene to challenge the Settlement Order and the Settlement Agreement.
- Whether the bankruptcy court acted in a manner inconsistent with due process of law in connection with the Settlement Motion and Settlement Order.
- Whether the Settlement Agreement that was the subject of the Settlement Motion and Settlement Order was fair and equitable and whether the Settlement Agreement should have been approved.
- Whether the bankruptcy court erred in not granting reconsideration of the Settlement Order in connection with Motion Of NL Frank Akers, L.P. To Reconsider Order Granting Chapter 11 Trustee's Application Pursuant To FED. R. BANKR. P. 9019 In Support Of Settlement Agreement With The Internal Revenue Service.

- Whether the bankruptcy court erred in not granting reconsideration, modification, or additional findings of fact and conclusions of law in connection with the Settlement Order such that nothing about the Settlement Order or the proceedings in connection with the Settlement Order shall operate as an adjudication of the rights of NL Frank Akers, L.P. and that the Settlement Order proceedings shall not be construed to operate as res judicata, claim preclusion, collateral estoppel, issue preclusion, or similar bar to NL Frank Akers, L.P. seeking any legal or equitable remedies, causes of action, damages, rights under Code of Ala. § 10-2B-6.40(c) (2005), or rights with respect to state or federal court litigation.

**B. Designation of Record on Appeal**

4. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. FED. R. BANKR. P. 8006. With respect to the Appealed Orders. NLFA designates the following Record Items for the Appeal of the Appealed Orders: *See Attached Appendix A.*

**C. Record Item Assembly**

5. Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. FED. R. BANKR. P. 8006. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record. FED. R. BANKR. P. 8006. Pursuant to FED. R. BANKR. P. 8006, NLFA is assembling copies of the above designated record items for submission to the clerk.

Dated: August 25, 2005

Respectfully submitted,

SMITH KATZENSTEIN & FURLOW LLP



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**IN THE UNITED STATES BANKRUPTCY COURT  
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**In re:** : Case No. 98-2870 (DDS)  
**SUMMIT METALS, INC.,** : Chapter 11  
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**APPENDIX A**

**NL FRANK AKERS, L.P.'S ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Item No.	Docket No.	Date	Description
1			Docket for Summit Metal, Inc., Case No. 98-02870, pending in the United States Bankruptcy Court for the District of Delaware
2	406	03/11/05	Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service with Attachments #1 Notice, #2 Proposed Order, Exhibits A and B, Certificate of Service with Service List
3	413	04/12/05	Objection of JEPSCO Ltd., James Kelly and Thomas Aylward to Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with Internal Revenue Service with Exhibits A-D and Affidavit of Service
4	416	04/13/05	Riverside Millwork Co., Inc.'s Limited Objection to Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with Internal Revenue Service with Exhibit A and Certificate of Service
5	438	04/22/05	United States' Motion for Leave Pursuant to Local Bankruptcy Rule 9006-1(d) to File Its Omnibus Response to the JEPSCO, Kelly, Aylward, and Rivco Objections with attached Proposed Order and Certificate of Service
6	440	04/22/05	United States' Omnibus Response to Objections of JEPSCO, James Kelly, Thomas Aylward and Riverside Millwork Company, Inc. to Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with Internal Revenue Service with Exhibits A-D
7	450	04/26/05	Motion of the Official Committee of Unsecured Creditors for an Order Granting Authority, Pursuant to Delaware Local Bankruptcy Rule 9006-1(d) to File Omnibus Reply Papers (Relates to Docket Number 413 and 416) with attached proposed Omnibus Reply with Exhibits A-B, Proposed Order and Certificate of Service

Item No.	Docket No.	Date	Description
8	453	04/27/05	Amended Motion of the Chapter 11 Trustee for an Order Granting Authority, Pursuant to Delaware Local Bankruptcy Rule 9006-1(d), to File Omnibus Reply Papers (Relates to Docket Number 413 and 416) with attached proposed order and Proposed Reply with Exhibits A and B
9	463	05/17/05	Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 for Approval of Settlement Agreement with attached Exhibit A (Settlement Agreement)
10	473	05/27/05	Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service with Exhibits 1-3, Certificate of Service and Service List
11	474	05/31/05	Order Setting Objection Deadline with Respect to the Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service
12	478	06/03/05	Amended Order Setting Objection Deadline with Respect to the Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service
13	483	06/08/05	Chapter 11 Trustee's Response to Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service with attached Certificate of Service and Service List
14	484	06/08/05	Objection of Official Committee of Unsecured Creditors of Summit Metals, Inc. to Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service
15	486	06/10/05	Transcript of Hearing held on April 29, 2005 before the Honorable Donal D. Sullivan
16	487	06/15/05	Order Denying Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service

Item No.	Docket No.	Date	Description
17	496	06/27/05	Motion of NL Frank Akers, L.P. to Reconsider, Modify and Make Additional Finding with Respect to: Order Denying Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service with Exhibits 1-3, proposed order, Notice of Motion, and Certificate of Service
18	508	7/27/05	Chapter 11 Trustee's Response to Motion of NL Frank Akers, LP to Reconsider, Modify and Make Additional Findings with Respect to: Order Denying Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service with attached Certificate of Service
19	511	8/10/05	Order Denying Motion of NL Frank Akers, LP to Reconsider, Modify and Make Additional Findings with Respect to: Order Denying Motion of NL Frank Akers, L.P. to Reconsider Order Granting Chapter 11 Trustee's Application Pursuant to Fed. R. Bankr. P. 9019 in Support of Settlement Agreement with the Internal Revenue Service
20	517	8/19/05	NL Frank Akers, L.P.'s Notice of Appeal
21	TBD	8/25/05	NL Frank Akers, L.P.'s Statement of Issues and Designation of Items to be Included in the Record for Appeal

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing NL FRANK AKERS, L.P.'S STATEMENT OF ISSUES AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD FOR APPEAL was served upon the following by U.S. first class mail, postage prepaid, on this 25th day of August, 2005.

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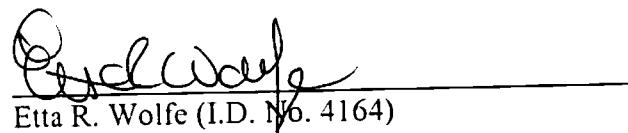
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